THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.23550 OF 2006

DATE: 08TH DECEMBER 2006

Between:
Mr. Ratna Rao, s/o T.S.Krishna Rao,
Aged 53 years, Occ: Privateemployee,
R/o Flat No.G1, Badam Apartments,
H.No.6-3-805, Somajiguda, Hyderabad.

... Petitioner.

And

1. Municipal Corporation of Hyderabad,
rep. By its Commissioner, Tank Bund
Road, Hyderabad and another.

... Respondents.

* * *

ORDER:

The matter is coming up for admission. This Court ordered notice before admission on 10.11.2006 and granted an order of *status quo* for a limited period, which was further extended for further limited period. Counter-affidavit is filed on behalf of R-1 and R-2. The counsel on record made a request to dispose of the writ petition finally.

2. Sri V.M.M.Chary, learned counsel representing the petitioner would submit that the constructions were made long prior to G.O.Ms.No.419 dated 30.7.1998 and even in the light of the contents of G.O.Ms.No.419, the same is not applicable to the prior constructions, and hence the impugned action can not be

sustained.

3. *Per contra*, Smt. G.Jyothi Kiran, learned Standing Counsel representing the respondents had taken this Court through the contents of counter-affidavit and would submit that inasmuch as certain constructions were made in deviation of the approved plan, the action initiated by the respondents in this regard is in accordance with law. Learned counsel also had taken this Court through the respective notices and the contents thereof.

4. Heard the counsel.

5. The writ petition is filed for a writ of Mandamus declaring action of the respondents in interfering with peaceful possession of the petitioner's flat No.G1 in M/s. Badam Apartments, situated at premises bearing
H.No.6-3-805, Somajiguda, Hyderabad, as illegal, arbitrary and contrary to the provisions of the Hyderabad Municipal Corporation Act, 1955 (hereinafter referred to as 'the Act' for the purpose of convenience) and consequently direct the respondents not to interfere with the rights of the petitioner's property in any manner and pass such other suitable orders.

6. It is stated by the petitioner that the petitioner is absolute owner of flat G1 in ground floor of Badam Apartments, bearing H.No.6-3-805, Somajiguda, Hyderabad and the petitioner purchased the said flat under a registered sale deed dated 25-02-1989 from one K.Ramulu. In the year 1981 the builder of the petitioner's apartment proposing to construct an apartment in the property approached the first respondent and obtained permission

for ground floor and 4 upper floors vide permit No.120/42, dated 12.3.1981 under fileNo.37/TP/A3/81. After obtaining the permission the builder constructed the apartment with in three years and sold the same to various persons including the vendor of the petitioner. It is also stated that the construction of the petitioner's apartment was completed in the year 1984 within the stipulated time and after completion of the constructions of the apartment, the purchasers of the flats are residing since 1984, including the petitioner. It is further stated that the petitioner was surprised to receive a notice dated 13.10.2006 from the respondents under Section 452 of the Hyderabad Municipal Corporation Act, 1955 and the petitioner was informed that the petitioner's flat is an unauthorized one constructed against the sanction plan vide permit No.120/42 dated 12.3.1981 and thereafter a notice under Section 636 of the Act was issued on 30.10.2006 directing the petitioner to remove/demolish the petitioner's flat within 24 hours. It is also stated that on the next day the petitioner gave a reply stating that the petitioner's apartment was constructed more than 20 years back and the constructions made prior to 1985 are deemed to be regularized. Further stand is taken that keeping in view this, the Government of Andhra Pradesh issued G.O.Ms.No.419 of 1998 for the constructions made after 1985 for regularization. Bringing all these facts, a reply was given to the respondents. On 09.11.2006 the officials of the respondents visited the petitioner's premises late in the evening for demolition of his property. With great difficulty and with the assistance of neighbours, the petitioner

could resist the same. Further, it is stated that the staff of the respondents had warned the petitioner in this regard and left the premises. Further specific stand is taken that G.O.Ms.No.419 dated 30.7.1998 for regularization of any deviation and unauthorized construction clearly states that any deviations/unauthorized constructions made after 1985 would be applicable for regularization. The purport behind fixing of 1985 for the starting year for the purpose of regularization is that any construction after 13 years would be deemed to be regularized by virtue of adverse possession. Several other factual details are also narrated.

7. In the counter-affidavit filed by the respondents 1 and 2 it was averred that the respondents corporation had accorded building permission for proposed construction of ground floor for parking plus 4 upper floors for residential flats at premises No.6-3-905 vide Permit No.120/42 dated 12.3.1981 in file No.37/TP/A3/81 in favour of Badam Apartments. It is also stated that three flats were constructed in the ground floor meant for parking unauthorizedly which resulted short fall in the parking space. Further it is averred that due to unauthorized conversion of the parking spaces into other purposes in the local area of the respondent corporation, most of the buildings, vehicles are forced to park on the roads, resulting in traffic problems. Therefore, the respondent corporation is taking up to clear these unauthorized structures in the parking areas and restore the parking spaces of the apartments. The orders made in C.C.No.101 of 1996 dated 28.02.1996 and in W.A.No.3140 of 2006 also had been referred to.

Further specific stand is taken that in the instant case the flat owners association is making representations and objecting for the conversion of the parking space into flats. Hence, the corporation had initiated action to restore parking space provided as per the sanction plan. The respondent corporation had provided due opportunity by issuing notice under Section 452 on 13.10.2006 asking upon the petitioner to submit explanation and the final notice under Section 636 of the Act was also issued on 30.10.2006. It is further averred in paragraph 5 of the counter-affidavit that petitioner herein had submitted an explanation to the notice served by the respondent corporation explaining that the building was constructed long back and it is deemed to have been regularized under the G.O.Ms.No.419 MA dated 30.7.1998 and the explanation submitted by the petitioner was not satisfactory as the petitioner never applied for any regularization of the structures even in pursuance of G.O.Ms.No.419 dated 30.7.1998 or any other G.Os. prior to issuance of G.O.Ms.No.419 for regularization of unauthorized structures. Even as per G.O.Ms.No.419 the structures made in the parking spaces reserved as per sanctioned plan are unauthorized and cannot be regularized. Such structures are liable to be demolished. Therefore, the action taken by the respondent corporation against the petitioner is perfectly valid. Further, it is stated that there is no specific time or period from the date of the sanction plan to take up action for demolition of illegal and unauthorized structures.

8. In the present case, no doubt an explanation was given in response to notice under Section 452 of the Act and not being

satisfied with the said explanation, a notice under Section 636 of the Act had been issued. As can be seen from the explanation given and the impugned notice under Section 636 of the Act, it is clear that the Commissioner, Municipal Corporation of Hyderabad had not taken into consideration all the relevant factors. Submissions at length were made in relation to the time limit to initiate action and further submissions are made that both on the grounds of equity and law at this point of time demolition cannot be ordered.

9. The scope and ambit of Section 452 or 454 of the Act also had been canvassed before this Court. Further, other relevant provisions of Sections 451, 453, 428 and also the contents of G.O.Ms.No.419 dated 30.7.1998 had been argued in elaboration. G.O.Ms.No.419 dated 30.7.1998 reads as hereunder.

REVISED ORDERS FOR REGULARISATION OF UNAUTHORISED CONSTRUCTIONS MADE UPTO 30-6-1998 IN THE AREAS OF MUNICIPAL CORPORATIONS, URBAN DEVELOPMENT AUTHORITIES AND MUNICIPALITIES

(G.O.Ms.No.419, M.A. & U.D. (MI) (M.A.), dt.30-7-1998)

Read the following:-

1. G.O.Ms.No.87, M.A, dated 12.2.1992
2. G.O.Ms.No.1235, M.A, dated 14.8.1992
3. G.O.Ms.No.313, M.A. dated 11.5.1993
4. G.O.Ms.No.243, M.A, dated 22.5.1996
5. G.O.Ms.No.343, M.A, dated 2.12.1997
6. G.O.Ms.No.289, M.A, dated 25.5.1998
7. G.O.Ms.No.373, M.A, dated 1.7.1998

Government after taking note of increased unauthorized constructions in Urban areas, without following the prescribed rules and regulations, took a decision to give a one time opportunity to the individuals to come forward and declare voluntarily the unauthorized constructions made by them and to get them regularized by paying the penal amount. Accordingly orders were issued in the G.O. 7th read above giving several concessions thereby facilitating the individuals to get the unauthorized constructions made upto 30.6.1998 regularised by paying the penal amount prescribed therein.

In the meanwhile, Government received representations from various forums requesting for extension of time limit and reduction of penal amount and simplification of procedure. Government after careful examination of the views expressed during the discussions have decided to substantially simplify the system and reduce the rates for regularization.

Keeping in view the unauthorized constructions made in small plots, i.e., in plots upto 200 sq. mts. Government had issued orders giving ample opportunity to get them regularized, and the time was also extended from time to time, lately upto
31-7-1998.

Government have decided not to extend the time limit fixed earlier in G.O. 6th read above
(i.e., 31-7-1998) for regularization of unauthorized constructions in small plots of upto 200 sq. mts. and direct that all the G.Os. hitherto issued in this regard for providing such regularizations shall cease to be in operation after 31-7-1998. However individuals who constructed the buildings unauthorisedly or in deviation of the sanctioned plan can get them regularized duly paying the penal amount and as per procedure prescribed in this order.

Government in supercession of all the G.Os. issued earlier on the regularization of unauthorized constructions now issue the following orders.

The rates for regularization of unauthorized constructions shall be as follows:

Penal amount rates

1. Penal amount for regularization of deviated/unauthorized individual residential buildings and institutional buildings in Municipal Corporation of Hyderabad and other areas:

Type of Development	Rs. per Sq. ft of violated area	
	M.C.H. Area	Other area
1.Individual Residential Building	15	10
2.Institutional Building	25	15

II. Penal Amount rates for regularisation of deviations/unauthorized construction of flats in Municipal Corporation of Hyderabad and other areas.

Type of flats	M.C.H. Area	Other areas

	Flat area in Sq. mtrs.		Flat areas in sq. mtrs.	
	Above 60	6 0 and below	Above 60	6 0 and below
Permitted Bldg/Flat but deviated from sanctioned plan with Regd. Sale deed of undivided share of land with construction agreement of flat/Regd. Sale deed of flat/Declaration of ownership.	Rs.5000/- per flat	Rs.4000/- per flat	Rs.4000/- per flat	Rs.3000/- per flat
Total unauthorized flats with Regd. Sale deed of undivided share of land with construction agreement of flat/Regd. Sale deed of flat/Declaration of ownership	Rs.10000/- per flat	Rs.8000/- per flat	Rs.8000/- per flat	Rs.6000/- per flat

Note: 60 Sq. mts. = 645.6 Sq. ft.

III. Penal amount rates for regularization of deviated/unauthorisedly constructed commercial/industrial buildings in Municipal Corporation of Hyderabad and other areas.

Type of Development	M.C.H. Area	Other areas

Permitted building but deviated space from sanctioned plan and covered by Registered Sale Deed/ Registered Sale Agreement/ Declaration of ownership.	Per Sq. ft.of violated area Rs.60/-	Per Sq. ft. of violated area Rs.45/-
Total unauthorized space and covered by Regd. Sale deed/ Regd. Sale agreement/ declaration of ownership	Rs.100/-	Rs.75/-

IV. Penal amount rate for regularization of huts and tiled roof structures.

Category	Up to 100 Sq. Mtrs. Plot Area	101 to 200 Sq. mtrs. Plot Area
Madras Terrace/ Mangalore Tiles/A.C. Sheets.	Rs.750/-	Rs.1000/-
Huts constructed on plots upto 200 sq. mtrs. Can be got regularised without payment of any penalty. If there are huts on plots above 200 sq. mtrs. They can be got regularized by paying a flat rate of Rs.750/-		

The Applications for regularization of unauthorized constructions along with voluntary declaration in the prescribed proforma enclosed in this order (Form-A) shall be filed with the concerned Commissioner of the Municipal Corporation/Municipality/Vice Chairman of the concerned Urban Development Authority for Panchayat areas falling in Urban Development Authority areas before 31.8.1998 along with 20% of the penal amount.

The applicants who filed Form-A for regularization of unauthorised constructions shall file Form-B along with required documents as prescribed in Form-B, Such as Building Plans, Ownership Documents, Undertakings etc. on or before 31.10.1998.

The balance of penal amount shall be paid within 4 months i.e., on or before 31-12-1998 in lumpsum or in not more than four equal instalments.

The Commissioners of Municipal Corporations/Municipalities, Vice Chairman of Urban Development Authorities as the case may be shall dispose of all such applications within a period of four months after collection of balance penal amount, prescribed fee, charges and development charges, wherever applicable. If any further information is required the individuals shall obtain the same from the concerned local authority/Urban Development Authority.

The old buildings are exempted from the purview of this Regularisation policy. The regularization procedure as detailed below is applicable to all unauthorized buildings constructed after 1.01.1985 and before 30.6.1998 or from the date of formation of Municipal local body/Urban Development Authority or date of inclusion of a particular area in the local body whichever is the latest. The declarants shall produce conclusive proof to establish that the construction was completed before 30.6.1998 or from the date of formation of Municipal local body/Urban Development Authority or date of inclusion of a particular area in the local body whichever is the latest. The declarants shall produce conclusive proof to establish that the construction was completed before 30.6.1998. The unauthorized constructions made after 30.6.1998 shall not be regularized under any circumstances.

Regularisation of unauthorized constructions/buildings shall not be considered in the following cases and in cases where public interest and safety are likely to be affected viz.

(a) Government/Municipal/Local Body's land.
(b) Surplus land declared under ULC and Agricultural Land Ceiling Act.
(c) Sites affected under the alignment of Master Plan/Zonal Development Plan Roads/and other Public roads.
(d) Tank bed and Shikam lands.
(e) Layout open spaces meant for public use.
(f) Parking spaces.
(g) Areas earmarked for Recreational use in Master Plan/Zonal Development Plans.
(h) In case of multi-storeyed buildings the aspects of fire safety, N.O.C. from Airport Authority and structural stability etc., will have to be considered by the Competent Authority before regularization of such structures.
(i) Subject to resolution of legal issues, if any.

The Government hereby authorize the Commissioners of all Municipal Corporations/Municipalities and Vice Chairman of Urban Development Authorities to regularize unauthorized constructions already made on sites/ plots where the title deed vests with the plot holder in relaxation of Zoning Regulations/Multi Storeyed Buildings Regulations/Building Rules etc. on payment of penal amount as prescribed and other usual fees and charges. If the declaration or the regularization of unauthorized constructions are not filed and the unauthorized constructions are not got regularized within the said stipulated period, or where it is found that the declaration covers unauthorized construction after 30.6.1998 action shall be initiated by the Commissioner of Municipal Corporations/Municipalities and Vice Chairman of Urban Development Authorities for demolition/sealing of property/confiscation.

13. The penal amount so collected for the regularization of such unauthorized constructions shall be kept in a separate head of account and shall be utilized for the specific purposes of developmental works like widening of roads, construction of bridges/fly overs/parks and play grounds or any other work with the prior of approval of the government.

14. The Commissioners of all Municipal Corporations/Municipalities and Vice-Chairman of all Urban Development Authorities are directed to take immediate necessary action in the matter and give wide publicity. They shall furnish a compliance report along with list of declarations received and action taken from time to time to the Government."

10. In the light of the facts and circumstances taking into consideration, the present action is being initiated after long lapse of time, this Court is of the considered opinion that the impugned action on the part of the respondents to be set aside and further the petitioner also is given liberty to raise all further objections including objections raised in the present writ petition before the Commissioner, Municipal Corporation of Hyderabad, first respndent herein, and the Commissioner, Municipal Corporation of Hyderabad, first respondent herein to take into consideration all the aspects and take appropriate decision in this regard both on the strength of the provisions of the Hyderabad Municipal Corporation Act, 1955, and also on the ground of equity.

11. The writ petition is accordingly allowed to the extent indicated above. No order as to costs.

P.S.NARAYANA, J.

Date: 08th December 2006.

BSB